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UNITED STATES DISTRICT COURT

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DISTRICT OF NEVADA

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ARTURO T. OCHOA,

Case No. 3:14-cv-00061-MMD-VPC

8

Plaintiff,

ORDER

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v.

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B. JACKSON, et al.,

Defendants.

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12 This prisoner civil rights action comes before the Court following plaintiff's failure
13 to pay the \$350.00 filing fee in response to the Court's order of February 3, 2014.

14 Pursuant to 28 U.S.C. § 1915(g), "if the prisoner has, on 3 or more prior
15 occasions, while incarcerated or detained in any facility, brought an action or appeal in a
16 court of the United States that was dismissed on the grounds that is frivolous, malicious,
17 or fails to state a claim upon which relief may be granted," he may not proceed *in forma*
18 *pauperis* and instead must pay the full \$350.00 filing fee in advance, unless he is under
19 "imminent danger of serious physical injury." See *Andrews v. King*, 398 F.3d 1113, 1123
20 (9th Cir. 2005); see also *Rodriguez v. Cook*, 169 F.3d 1176, 1178-82 (9th Cir. 1999);
21 *Tierney v. Kupers*, 128 F.3d 1310, 1311-12 (9th Cir. 1997). In the order of February 3,
22 2014, the Court found that, on at least three occasions, the Court has dismissed civil
23 actions commenced by plaintiff while in detention for failure to state a claim for which
24 relief may be granted. (Dkt. no. 3.)¹ The Court found that, in the complaint,
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¹See *Ochoa v. Cook, et al.*, 3:02-cv-00450-DWH-RAM; *Ochoa v. Willis, et al.*,
3:02-cv-00545-ECR-VPC (both dismissed for failure to state a claim upon which relief
may be granted); *Ochoa v. Putter C/O, et al.*, 3:10-cv-00364-HDM-RAM (dismissed as
delusional and factually frivolous). The Court takes judicial notice of its prior records in
the above matters.

1 plaintiff failed to plausibly allege that he is under imminent danger of serious physical
2 injury. (*Id.*) The Court denied plaintiff's application to proceed *in forma pauperis* and
3 ordered he must pay the full filing fee within thirty (30) days or his case would be
4 dismissed, pursuant to 28 U.S.C. § 1915(g). (*Id.*).

5 The thirty-day time period has expired, and plaintiff has not paid the filing fee.
6 Plaintiff has, however, filed two documents entitled "application to seek leave to file."
7 (Dkt. nos. 4 & 5.) Plaintiff's filings do not demonstrate that he is under imminent danger
8 of serious physical injury. Plaintiff, having failed to pay the filing fee for this action and
9 having failed to demonstrate that he is under imminent danger of serious physical injury,
10 has not made the showing required by 28 U.S.C. § 1915(g) to allow his complaint to
11 proceed.

12 It is therefore ordered that this action is dismissed without prejudice for failure to
13 pay the filing fee. The Clerk of Court shall enter final judgment accordingly.

14 It is further ordered that this Court certifies that any *in forma pauperis* appeal
15 from this order would not be taken "in good faith" pursuant to 28 U.S.C. § 1915(a)(3).

16 DATED THIS 10th day of April 2014.

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19 MIRANDA M. DU
20 UNITED STATES DISTRICT JUDGE
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